

REPUBLIC OF SOUTH AFRICA

CONSTITUTION TWELFTH AMENDMENT BILL

*(As amended by the Portfolio Committee on Justice and Constitutional Development
(National Assembly))
(The English text is the official text of the Bill)*

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 33B—2005]

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[] Words in bold type in square brackets indicate omissions from existing enactments.

 Words underlined with a solid line indicate insertions in existing enactments.

To amend the Constitution of the Republic of South Africa, 1996, so as to effect a technical change; to re-determine the geographical areas of the nine provinces of the Republic of South Africa; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

Substitution of section 103 of the Constitution of the Republic of South Africa, 1996, as amended by section 3 of the Constitution Eleventh Amendment Act of 2003

1. The following section is substituted for section 103 of the Constitution of the Republic of South Africa, 1996 (hereinafter referred to as the Constitution):

“Provinces

103. (1) The Republic has the following provinces:

- | | | |
|----------|-----------------|----|
| (a) | Eastern Cape; | |
| (b) | Free State; | 10 |
| (c) | Gauteng; | |
| (d) | KwaZulu-Natal; | |
| (e) | <u>Limpopo;</u> | |
| [(e)](f) | Mpumalanga; | |
| [(f)](g) | Northern Cape; | 15 |
| [(g) | Limpopo] | |
| (h) | North West; | |
| (i) | Western Cape. | |

(2) The **[boundaries]** geographical areas of the respective provinces [are those that existed when the Constitution took effect] comprise the sum of the indicated 20 geographical areas reflected in the various maps referred to in the Notice listed in Schedule 1A.

(3) (a) Whenever the geographical area of a province is re-determined by an amendment to the Constitution, an Act of Parliament may provide for measures to regulate, within a reasonable time, the legal, practical and any other consequences of the re-determination.

(b) An Act of Parliament envisaged in paragraph (a) may be enacted and implemented before such amendment to the Constitution takes effect, but any provincial functions, assets, rights, obligations, duties or liabilities may only be transferred in terms of that Act after that amendment to the Constitution takes effect.

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Amendment of section 155 of the Constitution of the Republic of South Africa, 1996, as amended by section 1 of the Constitution Third Amendment Act of 1998

2. Section 155 of the Constitution is hereby amended by the deletion of subsection (6A).

Amendment of section 157 of the Constitution of the Republic of South Africa, 1996, as amended by section 2 of the Constitution Third Amendment Act of 1998

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3. Section 157 of the Constitution is hereby amended by the deletion of paragraph (b) of subsection (4).

Insertion of Schedule 1A in the Constitution of the Republic of South Africa, 1996

4. The following Schedule is hereby inserted in the Constitution after Schedule 1: 15

“SCHEDULE 1A

GEOGRAPHICAL AREAS OF PROVINCES

The Province of the Eastern Cape

Map No. 3 of Schedule 1 to Notice 1998 of 2005
 Map No. 6 of Schedule 2 to Notice 1998 of 2005
 Map No. 7 of Schedule 2 to Notice 1998 of 2005
 Map No. 8 of Schedule 2 to Notice 1998 of 2005
 Map No. 9 of Schedule 2 to Notice 1998 of 2005
 Map No. 10 of Schedule 2 to Notice 1998 of 2005
 Map No. 11 of Schedule 2 to Notice 1998 of 2005

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The Province of the Free State

Map No. 12 of Schedule 2 to Notice 1998 of 2005
 Map No. 13 of Schedule 2 to Notice 1998 of 2005
 Map No. 14 of Schedule 2 to Notice 1998 of 2005
 Map No. 15 of Schedule 2 to Notice 1998 of 2005
 Map No. 16 of Schedule 2 to Notice 1998 of 2005

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The Province of Gauteng

Map No. 4 of Schedule 1 to Notice 1998 of 2005
 Map No. 17 of Schedule 2 to Notice 1998 of 2005
 Map No. 18 of Schedule 2 to Notice 1998 of 2005
 Map No. 19 of Schedule 2 to Notice 1998 of 2005
 Map No. 20 of Schedule 2 to Notice 1998 of 2005
 Map No. 21 of Schedule 2 to Notice 1998 of 2005

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The Province of KwaZulu-Natal

Map No. 22 of Schedule 2 to Notice 1998 of 2005
 Map No. 23 of Schedule 2 to Notice 1998 of 2005
 Map No. 24 of Schedule 2 to Notice 1998 of 2005
 Map No. 25 of Schedule 2 to Notice 1998 of 2005
 Map No. 26 of Schedule 2 to Notice 1998 of 2005
 Map No. 27 of Schedule 2 to Notice 1998 of 2005
 Map No. 28 of Schedule 2 to Notice 1998 of 2005
 Map No. 29 of Schedule 2 to Notice 1998 of 2005

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Map No. 30 of Schedule 2 to Notice 1998 of 2005
 Map No. 31 of Schedule 2 to Notice 1998 of 2005
 Map No. 32 of Schedule 2 to Notice 1998 of 2005

The Province of Limpopo

Map No. 33 of Schedule 2 to Notice 1998 of 2005
 Map No. 34 of Schedule 2 to Notice 1998 of 2005
 Map No. 35 of Schedule 2 to Notice 1998 of 2005
 Map No. 36 of Schedule 2 to Notice 1998 of 2005
 Map No. 37 of Schedule 2 to Notice 1998 of 2005

The Province of Mpumalanga

Map No. 38 of Schedule 2 to Notice 1998 of 2005
 Map No. 39 of Schedule 2 to Notice 1998 of 2005
 Map No. 40 of Schedule 2 to Notice 1998 of 2005

The Province of the Northern Cape

Map No. 41 of Schedule 2 to Notice 1998 of 2005
 Map No. 42 of Schedule 2 to Notice 1998 of 2005
 Map No. 43 of Schedule 2 to Notice 1998 of 2005
 Map No. 44 of Schedule 2 to Notice 1998 of 2005
 Map No. 45 of Schedule 2 to Notice 1998 of 2005

The Province of North West

Map No. 5 of Schedule 1 to Notice 1998 of 2005
 Map No. 46 of Schedule 2 to Notice 1998 of 2005
 Map No. 47 of Schedule 2 to Notice 1998 of 2005
 Map No. 48 of Schedule 2 to Notice 1998 of 2005

The Province of the Western Cape

Map No. 49 of Schedule 2 to Notice 1998 of 2005
 Map No. 50 of Schedule 2 to Notice 1998 of 2005
 Map No. 51 of Schedule 2 to Notice 1998 of 2005
 Map No. 52 of Schedule 2 to Notice 1998 of 2005
 Map No. 53 of Schedule 2 to Notice 1998 of 2005
Map No. 54 of Schedule 2 to Notice 1998 of 2005”.

Short title and commencement

5. (1) This Act is called the Constitution Twelfth Amendment Act of 2005, and takes effect on a date determined by the President by proclamation in the *Gazette*.

(2) Despite subsection (1), section 103(3) of the Constitution, as inserted by section 1, takes effect on the date of publication of this Act.

MEMORANDUM ON THE OBJECTS OF THE CONSTITUTION TWELFTH AMENDMENT BILL

1. BACKGROUND

- 1.1 The present nine provinces of the Republic of South Africa (the Republic) were established under section 124(1) of the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993) (the Interim Constitution). The areas of the respective provinces were defined in Part 1 of Schedule 1 to the Interim Constitution, which defined those areas primarily by reference to specific districts created in terms of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944).
- 1.2 Section 103(2) of the Constitution of the Republic of South Africa, 1996 (the Constitution), provides that "[t]he boundaries of the provinces are those that existed when the Constitution took effect", in other words, as defined under the Interim Constitution. Consequently, provincial boundaries are determined by reference to the boundaries of magisterial districts, rather than by reference to municipal boundaries. This state of affairs has resulted in some practical difficulties, particularly in respect of service delivery.
- 1.3 In terms of section 151(1) of the Constitution the local sphere of government consists of municipalities, which must be established for the whole of the territory of the Republic. In terms of section 155(6) of the Constitution each provincial government must establish municipalities in its province and must, by legislative or other measures, among others, provide for the monitoring and support of local government in the province.
- 1.4.1 Section 155(6A) of the Constitution regulates the establishment of the so-called "cross-boundary municipalities". It provides that if the criteria for the determination of municipal boundaries cannot be fulfilled without a municipal boundary extending across a provincial boundary, that municipal boundary may be determined across the provincial boundary, but only with the concurrence of the provinces concerned and after the respective provincial executives have been authorised by national legislation to establish a municipality within that municipal area. Such legislation has been enacted in the form of the Local Government: Municipal Structures Act, 1998 (Act No. 117 of 1998).
- 1.4.2 Section 155(6A) further provides that national legislation may, among others—
 - (a) provide a framework for the exercise of provincial executive authority in that municipal area and with regard to that municipality; and
 - (b) provide for the re-determination of municipal boundaries where one of the provinces concerned withdraws its support of a municipal boundary as determined.

National legislation that has been enacted in this regard is—

- (i) the Local Government: Cross-boundary Municipalities Act, 2000 (Act No. 29 of 2000), that authorises the provincial executives affected to establish cross-boundary municipalities and provides for the re-determination of the boundaries of such municipalities under certain circumstances; and
- (ii) the Redetermination of the Boundaries of Cross-boundary Municipalities Act, 2000 (Act No. 69 of 2000), and the Re-determination of the Boundaries of Cross-boundary Municipalities Act, 2005 (Act No. 6 of 2005), that authorise the re-determination of the boundaries of certain cross-boundary municipalities.

- 1.5 Sixteen cross-boundary municipalities were established in terms of the above-mentioned statutory provisions, affecting five provinces in the Republic. Since their establishment, numerous problems have been experienced in administering these municipalities. Consequently, on 1 November 2002 the Presidential Co-ordinating Council resolved, among others, that—
 - (a) the notion of cross-boundary municipalities be done away with; and
 - (b) provincial boundaries be reviewed so that all municipalities fall within one province or the other.
- 1.6 In order to give effect to the resolution, the Bill seeks to re-determine the geographical areas of the provinces to avoid municipal boundaries stretching over provincial boundaries. In addition, the Cross-boundary Municipalities Laws Repeal Bill, 2005, seeks to repeal all laws providing for cross-boundary municipalities and to deal with certain consequential implications in respect of municipal boundaries.

2. OBJECTS OF BILL

- 2.1 The Bill seeks to insert a new Schedule 1A in the Constitution that defines the areas of the provinces with reference to the geographical areas that are represented by municipal demarcation maps. These maps are contained in official notices issued by the Municipal Demarcation Board.
 - 2.1.1 By using municipal demarcation maps, the greatest common denominator of geographical areas is used, namely 6 metropolitan municipalities and 46 district municipalities. These structures represent wall to wall municipalities, whilst local municipal areas do not cover the whole of the territory of the Republic.
 - 2.1.2 By using municipal demarcation maps it will also not be necessary to amend the Constitution when the inner boundaries of metropolitan and district municipalities are changed.
- 2.2 The Bill also seeks to repeal sections 155(6A) and 157(4)(b) of the Constitution that deal with cross-boundary municipalities.

3. DEPARTMENTS/BODIES/PERSONS CONSULTED

- 3.1 The Department of Provincial and Local Government and the Municipal Demarcation Board have been consulted.
- 3.2 In terms of section 74(5) of the Constitution the Bill was—
 - (a) published in the national *Government Gazette* for public comment; and
 - (b) submitted to the provincial legislatures for their views.

4. IMPLICATIONS FOR PROVINCES

- 4.1 The Bill is intended to determine provincial boundaries and will therefore have an effect on the provinces concerned.
- 4.2 Provincial functions performed in affected municipalities, either by provincial governments or on an agency basis by the affected municipalities, will need to be addressed. This might also require adjustments to provincial budgets in order to address the shift in functions performed by one province to another.

5. FINANCIAL IMPLICATIONS FOR STATE

An adjustment to provincial equitable share allocations based on shifts in population of the provinces will need to be effected.

6. PARLIAMENTARY PROCEDURE

- 6.1 The State Law Advisers and the Department of Justice and Constitutional Development are of the opinion that the proposed amendments fall within the ambit of section 74(3)(b) of the Constitution and consequently require the approval of both the National Assembly and the National Council of Provinces.
- 6.2 As the Bill is intended to determine provincial boundaries, the National Council of Provinces may not, in terms of section 74(8) of the Constitution, pass the Bill unless it has been approved by the legislatures of the provinces concerned.
- 6.3 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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